

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REGINALD R. YORK, ) No. C 09-6080 LHK (PR)  
Plaintiff, )  
v. ) ORDER DENYING MOTION FOR  
J. HERNANDEZ, ) LEAVE TO FILE A MOTION FOR  
Defendant. ) RECONSIDERATION  
)  
)

Plaintiff, a state prisoner proceeding *pro se*, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Prison Guard J. Hernandez and Inmate Appeals Officer N. Grannis violated his constitutional rights. On August 26, 2010, the Court dismissed Defendant Grannis from the complaint because Plaintiff failed to state a claim against him, and ordered that the amended complaint be served on Defendant Hernandez. Specifically, the Court interpreted Plaintiff's complaint against Grannis as alleging that Grannis improperly rejected Plaintiff's administrative appeal as untimely. The Court dismissed Grannis because there is no constitutional right to a prison administrative appeal or grievance. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). On September 23, 2010, Plaintiff filed a motion to reconsider the dismissal of Grannis. On September 24, 2010, Defendant filed an opposition.

“Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5

1 F.3d 1255, 1263 (9th Cir. 1993). In the Northern District of California, no motion for  
 2 reconsideration may be brought without leave of court.<sup>1</sup> *See Civil L.R. 7-9(a).* Under Civil  
 3 Local Rule 7-9, the moving party must specifically show: (1) that at the time of the motion for  
 4 leave, a material difference in fact or law exists from that which was presented to the court  
 5 before entry of the interlocutory order for which the reconsideration is sought, and that in the  
 6 exercise of reasonable diligence the party applying for reconsideration did not know such fact or  
 7 law at the time of the interlocutory order; or (2) the emergence of new material facts or a change  
 8 of law occurring after the time of such order; or (3) a manifest failure by the court to consider  
 9 material facts which were presented to the court before such interlocutory order. *See Civil L.R.*  
 10 *7-9(b).*

11 In his motion, Plaintiff likens his case to that of another prisoner plaintiff who survived a  
 12 motion for summary judgment in the Eastern District of California on his claim that a defendant  
 13 ratified a policy of deliberate indifference to serious medical needs by automatically rejecting the  
 14 plaintiff's administrative appeals.<sup>2</sup> *See Woods v. Carey*, 2006 WL 548190 (E.D. Cal. March 6,  
 15 2006). Here, Plaintiff asserts that his claim against Grannis should not be dismissed because he  
 16 alleged that "Grannis had rejected his inmate appeal as untimely to prevent any further actions to  
 17 be taken against prison guard J. Hernandez, and deprive the Plaintiff of any other relief that he  
 18 may be entitled."

19 The Court is not persuaded. In *Woods*, the district court relied on *Williams v. Ellington*,  
 20 936 F.2d 881, 884-885 (6th Cir. 1991). In *Williams*, the Sixth Circuit discussed when municipal  
 21 liability may be imposed through the action or inaction of municipal policymakers. *Id.* at 884. It  
 22 analyzed a Supreme Court case which stated that when a challenged policy is not  
 23 unconstitutional, there needs to be more proof than one single incident to establish both fault on  
 24 the part of the municipality and the causal connection between such policy and the constitutional  
 25 deprivation. *Id.* (quoting *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 824 (1985)). The Sixth

26  
 27 <sup>1</sup> The Court construes Plaintiff's motion for reconsideration as a motion for leave to file  
 a motion for reconsideration.  
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<sup>2</sup> Eventually, that plaintiff went to trial and was awarded monetary damages.

1 Circuit concluded that even though the defendant School Board believed that school employees  
 2 were justified in conducting a challenged strip search, such acceptance was not a ratification  
 3 sufficient to show causation. *Williams*, 936 F.2d at 884-885. Further, the court noted that there  
 4 was no history that the policy had been repeatedly or sporadically misapplied. Finally, the court  
 5 stated that the board “cannot be held liable for the ratification of the search in question, because  
 6 this single, isolated decision can hardly constitute the moving force behind the alleged  
 7 constitutional deprivation.”

8 First, this Court is not bound by the decisions of out-of-circuit cases, nor by decisions of  
 9 its sister district courts. *Cf. Hart v. Massanari*, 266 F.3d 1155, 1172-73 (9th Cir. 2001)  
 10 (discussing differences between controlling and persuasive authority). Second, to the extent  
 11 Plaintiff is alleging that Grannis is similarly situated to the defendant in *Woods*, this argument is  
 12 unavailing. In *Woods*, the district court concluded that the facts in the complaint, alleging that  
 13 the defendant repeatedly improperly screened appeals, could reasonably imply that the defendant  
 14 ratified a prison policy of being deliberately indifferent to prisoner plaintiff’s dental needs. In  
 15 contrast, here, Plaintiff alleges that Grannis improperly screened one appeal as untimely. Based  
 16 on the allegation, it is not reasonable to infer that Grannis was ratifying any policy. Third, even  
 17 assuming that Grannis improperly screened out Plaintiff’s appeal, his allegations are too  
 18 conclusory to state a constitutional violation. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
 19 553-56 (2007) (“a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief  
 20 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause  
 21 of action will not do. . . . Factual allegations must be enough to raise a right to relief above the  
 22 speculative level.”) (internal quotation marks omitted); *see also Rhodes v. Robinson*, 408 F.3d  
 23 559, 567-68 (9th Cir. 2005) (listing the five elements of retaliation in the prison context).

24 In sum, Plaintiff does not demonstrate any factors that warrant reconsideration.  
 25 Accordingly, Plaintiff’s motion for leave to file a motion for reconsideration is DENIED.

26 IT IS SO ORDERED.

27 DATED: 10/27/2010

  
 28 LUCY H. KOH  
 United States District Judge